

FILED	LODGED
RECEIVED	COPY
SEP 12 2000	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Santos Cardenas Lopez,)
et al.,)
)
Plaintiffs,)
)
v.)
)
Northern Arizona Coca-Cola)
Bottling Co., et al.,)
)
Defendants.)

NO. CV-99-192-TUC-JMR

AMENDED ORDER

Pending before the Court are Defendants Transcor America, Inc.'s, Steve Hardy Thompson's, and Michael DeMoss's (Defendants) Motion for Summary Judgment and Plaintiffs' Motion for Partial Summary Judgment on Plaintiffs' negligence per se claim. On Tuesday, November 21, 2000, a hearing was held regarding these motions. After reviewing the parties' briefs, hearing oral argument, and considering all the evidence, Defendants' motion for summary judgment is granted in part as to Plaintiffs' negligence per se, § 1983 and punitive damages claims and denied in part as to Plaintiffs' negligence claim. Further, Plaintiffs' motion for partial summary judgment is denied.

1. Negligence Per Se

Plaintiffs contend that Defendants were negligent per se by failing to install seatbelts at the forward-facing rear benches in their prison transport vans in violation of 49 C.F.R. § 571.208, Part S4.2.4. This regulation requires all motor vehicles designed to carry ten persons or less to be equipped with seatbelts at every

forward-facing rear seating position. Here, Transcor's vans, as modified by Transcor to serve its unique business needs, are designed to seat 14 people. Therefore, Defendants have not violated 49 C.F.R. § 571.208, Part S4.2.4 and Plaintiffs' negligence per se claim fails. Accordingly, Defendants' motion for summary judgment is granted as to Plaintiffs' negligence per se claim and Plaintiffs' motion for partial summary judgment is denied.

2. Negligence

Despite Defendants' argument to the contrary, Transcor, as a common carrier and as a custodian of prisoners, does have a duty to exercise reasonable care to protect the safety of the inmates it transports. See De Shaney v. Winnebago County D.S.S., 489 U.S. 189, 199-200 (1989) (citations omitted); RESTATEMENT (SECOND) OF TORTS § 314 (1), (4) (cited in Demontiney v. Desert Manor Convalescent Center, Inc., 144 Ariz. 6, 11, 695 P.2d 255, 260 (1985)). In addition, that Plaintiffs do not have expert testimony as to the causation element does not preclude, at this time, Plaintiffs' negligence claim. Therefore, Defendants' motion for summary judgment is denied as to Plaintiffs' negligence claim.

3. § 1983

Plaintiffs' 42 U.S.C. § 1983 claim based upon a violation of the Eighth Amendment is without merit. Transcor's failure to equip its vans with a passenger restraint system does not amount to deliberate indifference to Plaintiffs' safety. This failure constitutes negligence at most. Mere negligence is not enough to demonstrate deliberate indifference. Farmer v. Brennan, 511 U.S.

825, 835 (1994). Hence, Defendants' motion for summary judgment is granted as to Plaintiffs' § 1983 claim.

4. Punitive Damages

Punitive damages are available in a § 1983 action when "the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." Smith v. Wade, 461 U.S. 30, 56 (1983). "[T]his threshold applies even when the underlying standard of liability for compensatory damages is one of recklessness." Id.

In Arizona, punitive damages may be rewarded to a plaintiff in a tort action if the plaintiff shows by clear and convincing evidence that the defendant acted with an "evil hand ... guided by an evil mind." Murcott v. Best Western International, Inc., 329 Ariz. Adv. Rep. 1088, 1100, 9 P.3d 1088, 1100 (App. 2000). "The evidence must reflect that [the defendant] intended to injure [the plaintiff] or was deliberately indifferent to the rights of others, consciously disregarding a substantial risk of significant harm. Id. "To recover punitive damages, a plaintiff must prove by clear and convincing evidence that the defendant engaged in aggravated and outrageous conduct with an "evil mind," that is, with intent to injure or defraud, or deliberately interfere with the rights of others, "consciously disregarding the unjustifiably substantial risk of significant harm to them." Hilgeman v. American Mortgage Securities, Inc., 994 P.2d 1030, 1036 (App. 2000) (citations omitted).

In determining whether punitive damages are warranted, "[c]ourts must consider `the nature of the defendant's conduct, including the reprehensibility of the conduct and the severity of the harm likely to result, as well as the harm that has occurred[,], ... the duration of the misconduct, the degree of defendant's awareness of the harm or risk of harm, and any concealment of it.'" Id. (citations omitted). Punitive damages are awarded in order "to punish the wrongdoer and to deter others from emulating his conduct." Linthicum v. Nationwide Life Ins. Co., 150 Ariz. 326, 330, 723 P.2d 675, 679 (1986).

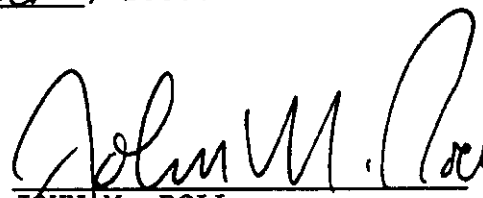
Plaintiffs are not entitled to punitive damages in this case. There is no evidence that Transcor intentionally interconnects prisoners together and fails to provide them any passenger restraint device in order to ensure that the prisoners are injured in an accident. Rather, Transcor does not equip their vans with seatbelts for fear that they will be used as weapons by the prisoners and cause harm to their agents. In addition, the prisoners are interconnected together during transport to prevent escape and therefore to protect the public at large.

Accordingly,

IT IS ORDERED that Defendants' Motion for Summary Judgment is **GRANTED IN PART** as to Plaintiffs' negligence per se, § 1983 and punitive damages claims and **DENIED IN PART** as to Plaintiffs' negligence claim.

IT IS FURTHER ORDERED that Plaintiffs' motion for partial summary judgment is DENIED.

Dated this 10th day of September, 2000.


JOHN M. ROLL
U.S. District Judge